HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

W.P. No.346 of 2002 (SS)
(Old No. 22959/2000)

Satya Prakash Joshi vs. State and others

Approved for reporting.

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~~Not approved for reporting~~

Date of decision. 14.11.2003

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No.346 of 2002 (SS)

Satya Prakash Joshi son of Sri Anant Ram Joshi
Truck Driver, P.W.D. Purola, Uttarkashi ……. Petitioner

Versus

1. State of U.P.
2. Executive Engineer, P.W.D. Purola
3. Assistant Engineer, Nirman Khand
   P.W.D. Purola. ..…….Respondents

Dated: 14.11.2003

Hon'ble Rajesh Tandon, J.

Heard the learned counsel for the parties at length.

By the present writ petition the petitioner has prayed for the issue of a writ, order or direction in the nature of certiorari quashing the order dated 13.1.1999 passed by the respondent no.2, annexured-2 to the writ petition and for directing the respondents to permit the petitioner to work on his post as Truck Driver till he attains the age of 60 years.

Briefly stated the facts giving rise to the present writ petition are that petitioner was appointed as Truck Driver on 1.3.1968 in the Construction Division, P.W.D. Purola, District Uttarkashi and he was continuing to work there. The petitioner has stated that on 13.10.1999 an order was issued by the respondent no.2 to the effect that petitioner

will retire from service on 31.5.2000 after attaining the age of 58 years.

The grievance of the petitioner is that he is holding the post of Group "D' and as per Rules 56-A of the Fundamental Rules his age of superannuation is 60 years.

At the time of filing of the writ petition Hon'ble Mr. Justice S. Rafat Alam of Allahabad High Court has passed the following order:

"It is contended by Sri H.P. Dubey, learned counsel for the petitioner that the petitioner was appointed as Driver on 1.3.1968, therefore, in view of proviso of Rule 56-A of theFundamental Rules, the age of retirement is 60 years thus the petitioner has a right to continue in service till he attains the age of 60 years. He further drew my attention to the order of this Court dated 19.4.2000 passed in Civil Misc. Writ Petition No. 18115 of 2000, wherein a similar controversy was raised and by interim order this Court has stayed the operation of the impugned order.

Learned Standing Counsel prays for and is allowed four weeks' time to file counter affidavit. Rejoinder affidavit, if any, may be filed within two weeks thereafter. List the petition for admission in the week commencing 17th July 2000.

Considering the submissions, in the meanwhile, it is provided that the petitioner shall not be made to retire pursuant to the impugned order for a period of four months from today."

It has been informed by the learned counsel for the petitioner that consequent to the order of the Court, the petitioner worked till 31.5.2002, i.e. the dated of supperannuation after completing 60 years of age and thereafter he retired from service. The petitioner has prayed that the respondents are directed to pay retirement benefits to the petitioner.

The Apex Court in 1985 (1) S.C.C. State of Kerala and other Vs. M. Padmanabhan Nair has held that pension is a valuable right and property and the petitioner has a right to claim by virtue of the continuous services rendered by him. The observations of the Apex Court are quoted below:-

"Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with penalty of payment of interest at the current market rate till actual payment."

The aforesaid judgment of the Apex Court has also been followed in JT 1999 (2) SC 359 Dr. Uma Agarwal Vs. State of U.P. & another and has held as under: -

"Now-a-days, several writ petitions are being filed in this court and various High Courts seeking relief for disbursement, of retrial benefits, because of inordinate delays in payment of these benefits. As Krishna Iyer J. stated in State of Mysore Vs. C.R. Sheshadri & others (1974(4) S.C.C. 308), a retired government official is sensitive to delay in drawing monetary benefits. And to avoid posthumous satisfaction of the pecuniary expectation of the superannuated public servant- not unusal in government, it is becoming necessary to issue directions, in several cases, for early payment of these dues. In yet another case in State of Kerala and others Vs. M. Padmanabhan Nair (1985 (1) SCC 429 this court had occasion to point out that usually 'the delay occur by reason of non-production of the L.P.C. (Usually) 'the delay occur by reason of non-production of the L.P.C. (last pay certificate) and the N.L.C. (no liability certificate) from the concerned Departments but both these documents pertain to matters, records whereof would be with the concerned Government Departments. Since the date of retirement of every Government servant is very much known in advance we fail to appreciate why the process of collecting the requisite information and issuance of these two documents should not be completed at least a week before the date of retirement so that the payment of gratuity amount could be made to the Government servant on the date he retires or on the following day and pension at the expiry of the following month. The necessity for prompt payment of the retirement dues to a Government servant immediately after his retirement cannot be over-emphasised and it would not be unreasonable to direct that the liability to pay penal interest on these

dues at the current market rate should commence at the expiry of two months from the date of retirement."

In R. Kapur Vs. Director of Inspection (Painting and publication) Income Tax and another, reported in (1994) 6 Supreme Court Cases 589 the Apex Court after relying the judgment of the Apex Court in State of Kerala Vs. M. Kadmanabhan Nair 1985 (1) S.C.C. page 429, has held as under:-

"8. In this appeal before us the appellant urges that he would be entitled to 18% interest at least in view of judgment of this Court in State of Kerala Vs. M. Padmanabhan Niar. Relying on this ruling, it is submitted that there is unjustified culpable delay in issuing the No Demand. Certificate. The Tribunal having held that DCRG cannot be withheld because of the pendency of the claim for damages should have awarded interest at the rate of 18% per annum.

……..

10. This court in M. Madmanabhan Nair case has held as under:-

Pension and gratuity are no longer any bounty to be distributed by the Government to its employees on their retirement but have become, under the decisions of this Court, valuable rights and property in their hands and any culpable delay in settlement and disbursement thereof must be visited with the penalty of payment of interest at the current market rate till actual payment."

In view of the aforesaid, retirement benefits admissible to the petitioner cannot be withheld by the respondents.

The respondents are, therefore, directed to release all retirement benefits admissible to the petitioner within one month from the date of

filing certified copy of this order. The petitioner shall also be entitled to get interest on pension @ 6% per annum besides this he shall be paid admissible interest on G.P.F. gratuity, G.I.S. etc.

With the aforesaid observations the writ petition is disposed of. No order as to costs.

14.11.2003 **(Rajesh Tandon, J.)**

Dhyani